
SPs

UNIVERSITY OF CALIFORNIA

Section: 37

Service Subcontracting

Subject: 37.1

Consultants and Personal Services

PURPOSE:

The purpose of this standard practice (SP) is to describe the procedures and responsibilities necessary for ensuring the cost-effective, appropriate use of consultants.

POLICY:

The Laboratory will engage the services of a consultant when such services are of a short-term or intermittent nature, contribute to the Laboratory's mission, and cannot be performed as effectively by a regular or temporary employee.

SCOPE:

This SP applies to all subcontracts for consultants and personal services.

Exception

Architect-engineer services are excluded from the definition of consultant services. See SP 36.2, *Architect-Engineer Services*.

DEFINITIONS:

Consultant

A consultant is an individual acting on his or her own behalf who provides expert advisory or assistance services of a technical or professional nature on a fee or per diem basis. Current Laboratory employees may not be Laboratory consultants.

Consultant Agreement

A consultant agreement is an agreement between the Laboratory and a person acting as an independent subcontractor in performing consulting services.

Consultant Services

Consultant services are the services of an expert who personally renders services to the Laboratory on a short-term or intermittent basis. Consultants provide technical, scientific, engineering, and/or administrative expertise not otherwise available to the Laboratory. Consulting services may consist of information, advice, opinions, alternatives, conclusions, recommendations, or direct assistance, such as studies, analyses, evaluations, and liaison. Consultant services may be provided under a consultant agreement or a personal services agreement.

Personal Services Agreement (PSA)

A personal services agreement is an agreement between the Laboratory and an established company which makes available by name one or more of its employees as consultants. At LANL, a personal services agreement is known as a borrowed personnel agreement.

PROCEDURES:
Appropriateness

Consultant services allow the Laboratory to

- Benefit from recognized expertise in a specific field;

PROCEDURES: *(cont)*

Limitations

- Provide for the mutual exchange of professional expertise;
- Collaborate on projects of mutual interest;
- Support and assist other institutions with the development of technological capabilities and transfer of knowledge; or
- Encourage the use of Laboratory facilities for educational purposes, provided that this use is in the Laboratory's interest.

Consultant services must be monitored to control placement of agreements for unauthorized purposes, such as retention of an active security clearance, or to bypass or undermine personnel ceilings or pay limitations. Under no circumstances may a consultant be used to specifically aid in influencing or enacting legislation. Consultants may **not** perform work of a policy-making, decision-making, managerial, or supervisory nature, nor may they approve or disapprove actions that commit or expend Laboratory funds.

Retirees — Special restrictions may apply to retired Laboratory and University employees. Consult the Human Resources organization for guidance.

Dual Compensation — The following limitations are imposed by DOE and the University on using consultants who are also performing other DOE or University work:

- An individual may not render services in a consultant capacity if the individual is an employee of another organization and concurrently performing work on a full-time, annual basis for that organization under a cost-type contract with DOE.

Note: The Laboratory may borrow the individual from another DOE cost-type contractor where any payment is a cash payment made pursuant to the Prime Contract or DOE procedures to such other contractor and not to the individual. Also, other federal agency personnel may render consulting services to the Laboratory on their own time to the extent permitted by that agency's regulations.

PROCEDURES: (cont)

Requests for
Consultant Services

- University policies and practices govern when and under what circumstances University faculty members may serve as consultants to the Laboratory. Approval of the proposed faculty consultant's academic department must be obtained.

Requests for consultant services are initiated by requesters. The request may be for a new consultant, the renewal of a consultant whose agreement has terminated, or an additional consultation under an agreement already in place under another organization within the Laboratory. Request packages are then forwarded to Procurement.

Laboratory-Specific
Instructions (SIs)

LANL

The requester must submit an *Affiliate Request* (Form 1098) for consultant services to the organization's division director or designee.

LBNL

The requester must submit the *Request for Consultant Agreement* package for review and approval to the requesting organization's division director and to the Chief Financial Officer or designee.

LLNL

The requester must submit a *Request for Consultant Agreement* package for review and approval to his or her associate director or designee.

Consultant Services
Package

At a minimum, a request for consultant services package should contain the following information, if appropriate or known, regarding the consultant and/or the services to be performed:

- Résumé;
- Citizenship;
- Name, address, telephone number, area of expertise, title, social security number, and present employer;
- Particular skills/expertise for the services to be performed;
- First anticipated date of need;
- Security information for badging purposes;

PROCEDURES: (cont)

- Whether reimbursement for travel and other services is authorized;
- Scope of the proposed work;
- Suggested daily fee, if known;
- Requirements for government property, if any;
- Funding citation;
- *Organizational Conflicts of Interest Pre-Procurement Fact Sheet* (see Conflicts of Interest, below);
- Explanation for the use of a consultant off-site, if applicable;
- Estimated cost breakdown;
- Number of days the consultant services will be needed (see Number of Service Days, below); and
- Period of desired agreement with justification for multiple years.

Statement of Expertise

For all consultant agreements, the requester must identify the consultant's expertise, skills and/or credentials to perform the proposed work. For consultant agreements expected to exceed \$50,000 per year, the statement of expertise must be reviewed for sufficiency.

Laboratory-Specific Instructions (SIs)

LANL

The statement of expertise must be reviewed by the Team Leader for Services (BUS-5-2).

LBNL/LLNL

The statement of expertise must be reviewed by the Procurement Specialist.

Security Issues

Foreign nationals who are not permanent residents of the U.S. are required to have an appropriate visa in order to receive payment from the Laboratory. Coordination with Security is required well in advance of an anticipated visit by a foreign national.

PROCEDURES: (cont)

Laboratory-Specific
Instructions (SIs)

LANL

Requesters are responsible for processing all documents to obtain security clearances and badges for consultants, obtaining DOE authorization for foreign nationals to enter the Laboratory, and providing escorts for consultants, if needed.

See SI 4.7, *Foreign Nationals*, for procedures pertaining to foreign nationals.

LBNL

No Laboratory-Specific Instruction available.

LLNL

See SI 4.5.1, *Foreign Nationals*, for procedures pertaining to foreign nationals.

Scope of Work

The scope of work should be specific in terms of the area of work to be performed, the period of performance, and the approximate number of days the service is to be provided.

Conflicts of Interest

Personal Conflicts of Interest — Request packages must be scrutinized for personal conflicts of interest. See SP 3.4, *Personal Conflicts of Interest*.

Organizational Conflicts of Interest — Request packages must also be reviewed for organizational conflicts of interest (see SP 9.3, *Organizational Conflicts of Interest*).

Solicitations

Formal, written solicitations and proposals are not required for consultant agreements or PSAs under the small purchase threshold (see SP 13.1, *Small Purchases*). Consultant agreements and PSAs are subject to the requirements for submission of cost or pricing data. See SP 15.5, *Cost or Pricing Data*.

Number of Service
Days

Consultant agreements must specify an anticipated number of service days per agreement year. A consultant may not normally receive fees for more than 90 service days within the agreement year. Agreements may be written for a period of up to five years with appropriate justification from the requester to support the long term need for the consultant's services. There are no restrictions on the number of service days within the agreement period for PSAs.

Fee

A determination must be made that fee rates are fair and reasonable. Reasonableness of a consultant's fees should be

PROCEDURES: (cont)

Laboratory-Specific
Instructions (SIs)

LANL

based upon the individual's established market value and the market value of the services to be provided. Fee rates based on salary should be substantiated by

- A copy of a current paycheck stub;
- The prior year's W-2 form;
- A letter of agreement with the employer; or
- A statement of substantiation from the employer.

Fee rates based on contractual arrangements with other clients may be substantiated by submitting copies of client agreements or other suitable documentation. The number of required submissions may vary depending upon the amount of the requested fee and/or value of the submitted agreements.

LBNL/LLNL

LANL buyers should refer to SI 37.1, *Consultants and Personal Services*, for required approvals.

LBNL and LLNL buyers should refer to SI 1.2, *Delegation of Procurement Authority*, for required approvals.

No-Fee Agreements

Consulting agreements may be written on a no-fee basis, allowing reimbursement of expenses only. Expenses must be reimbursed in accordance with Laboratory policy, such as the Laboratory travel policy. If no fee is paid, consultants may serve an unlimited number of days per year. No solicitation is necessary.

Negotiations

Only the procurement specialist may discuss the terms and conditions of the consulting agreement with the consultant, including the fee rate. Control and conduct of the negotiations are the responsibility of the procurement specialist. Fee income is subject to federal and state income tax. Accounting will issue appropriate tax forms, covering total fee dollars paid during each calendar year to all consultants.

Allowable Expenses

Reimbursement of expenses is primarily limited to travel and travel-related expenses, using Laboratory travel policies as a basis for determining reasonableness. Foreign travel requires prior DOE approval. Other types of allowable expenses, to the extent that they are not covered in the consultant fee, include secretarial services, computer time, and any other reasonable

PROCEDURES: *(cont)*

Property

costs deemed necessary for successful completion of the consultation. Separate charges for the use of special facilities or equipment owned by the consultant, his or her employer, or other vendors are usually not considered reimbursable, unless justified by the requester and approved by the procurement specialist prior to award of the consultant agreement.

Acquisition of capital or attractive property should not be allowed. Deviating from this procedure requires a memorandum substantiating the necessity of such action, approval of the Procurement Manager, and inclusion of appropriate property clauses in the consultant agreement or PSA.

Reimbursement

A claim or invoice must be submitted to the Laboratory for reimbursement for consulting services. The requester must review and certify that the services have been rendered as claimed, that the period of time claimed is correct, and that the quality and quantity of work accomplished are acceptable (see SP 32.1, *Payments*).

Personal Services

Personal services are treated in essentially the same manner as consultant services, except as follows:

- FOCI (Foreign Ownership, Control or Influence over Contractor) determinations from DOE are required, when applicable;
- Solicitations are sent to the individual's company, not the individual;
- Payment is made to the company after approval of the invoice; and
- There are no restrictions on the number of service days within the agreement period.

REVIEWS/APPROVALS:

General

DOE approval must be obtained for agreements which have fees or other conditions in excess of the authority established for each Laboratory and for conflict of interest situations. Refer to SI 1.2, *Delegation of Procurement Authority*.

In addition, foreign travel must be approved by DOE in advance.

REVIEWS/APPROVALS:
(cont)

LANL

An *Affiliate Request* (Form 1098) must be reviewed and approved by the requesting organization's division director or designee.

LBNL

The *Request for Consultant Agreement* must be reviewed and approved by the requesting organization's division director and the Chief Financial Officer or designee.

LLNL

A *Request for Consultant Agreement* must be reviewed and approved by the associate director or designee of the requesting organization.

RESPONSIBILITIES:
Procurement
Specialist

The procurement specialist must ensure that

- Consultants do not receive unreasonable fees or travel and subsistence allowances;
- Consultants are not biased due to a conflict of interest; and
- A determination of reasonableness is made for a consultant's fee rate.

Requesters

Requesters are responsible for

- Ensuring that requests for consultant services packages are complete and accurate;
- Ensuring that consultants are not retained to perform work of a policy-making, decision-making, managerial, or supervisory nature;
- Not selecting consultants on the basis of personal association or other nonobjective factors;
- Not obtaining consultants for services that may be performed as effectively by the Laboratory's regular employees;
- Processing all documents to obtain security clearances and badges;

SPs

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Subject: 37.1 Consultants and Personal Services

RESPONSIBILITIES:
(*cont*)

- Providing escorts for consultants, if needed;
- Submitting properly approved and completed request for consultant services packages to Procurement; and
- Reviewing invoices, and verifying and certifying to the accuracy of the consultant's costs.

REFERENCES:

Prime Contract Appendix A, Article 18